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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 RALPH W. CLOSE and LAURA A.
10 LARSON, individually as parents of the
11 decedent JAMES ROBERT CLOSE,

12 Plaintiffs,

13 v.

14 PIERCE COUNTY, WASHINGTON;
15 PIERCE COUNTY SHERIFF PAUL
16 PASTOR; STEVE PARR; EDWARD
17 CORRELL; JOSEPH GORMAN; AND
18 TODD KLEMME,

19 Defendants.

CASE NO. C09-5023RJB

ORDER

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21 This matter comes before the Court on a Motion for Relief from Judgment filed by
22 Defendants Pierce County, Pierce County Sheriff Paul Pastor, Edward Correll, Joseph Gorman,
23 and Todd Klemme (together the “Pierce County Defendants”). [Dkt. 25]. The Court has
24 considered the pleadings filed in favor of and in opposition to the motion and the record herein.
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27 **I. FACTS**

28 On January 16, 2009, Plaintiffs filed this civil rights case against the Pierce County
Defendants. [Dkt. 1]. Plaintiffs allege in their Amended Complaint that James Robert Close
committed suicide while in Defendants’ care at the Pierce County Jail. [Dkt. 4]. Plaintiffs
allege that “[t]he loss of James Close’s life due to [the Defendants’] deliberate indifference
deprived the Plaintiffs of their liberty interest in the companionship of their son without due
process of law, in violation of their rights under the Fourteenth Amendment to the Constitution
of the United States and 42 U.S.C. § 1983.” [Dkt. 4, at 9]. Plaintiffs also assert claims against

1 the County for maintaining policies that “were deliberately indifferent to the risk of suicide by
2 pretrial detainees,” and for failing to adequately train corrections officers regarding inmates
3 known to be suicide risks. [Dkt. 4, at 10].

4 The Pierce County Defendants are represented by Pierce County Deputy Prosecuting
5 Attorney Ronald Williams. [Dkt. 26]. On July 20, 2009, parties attended mediation. [Dkt. 34,
6 at 1]. Plaintiffs settled with one of the Defendants, Steve Parr, but did not settle with any of the
7 other Defendants. *Id.* The following week, Plaintiffs received a “Offer of Judgment” (made
8 pursuant to Fed. R. Civ. P. 68) from attorney Williams. [*Id.*, at 2]. The “Offer of Judgment”
9 stated that “Defendant Pierce County hereby offers to permit [Plaintiffs] to take a judgment
10 against it in this action in the amount, including attorneys’ fees and costs, of One Hundred
11 Thousand Dollars (\$100,000).” [Dkt. 21, at 5-6].

12 On August 6, 2009, Plaintiffs filed a pleading entitled “Request for Entry of Judgment.”
13 [Dkt. 21]. Plaintiffs indicated that they accepted the offer of judgment, and requested the
14 judgment be entered against “Defendant Pierce County only.” [*Id.*, at 21].

15 In his declaration in support of the motion for relief from judgement, Attorney Ronald
16 Williams states that the “offer of judgment was inadvertently worded as being made on behalf
17 of ‘Pierce County,’ and not more precisely worded to be on behalf of all the Pierce County
18 Defendants, including the individually-named Defendants.” [Dkt. 26, at 2]. He states that the
19 “offer of judgment was intended to be made on behalf of all of the County Defendants, as it was
20 during the mediation.” [*Id.*] Acting Risk Manager for Pierce County, Mark Maenhout, states
21 that he authorized a settlement amount of \$100,000.00 for all the Pierce County Defendants at
22 the mediation. [Dkt. 27, at 1-2]. He states that Defendants’ attorneys were not authorized to
23 make an offer of \$100,000.00 to settle the claims against the county only. [*Id.*]

24 Mr. Williams states that he was out of the office for a family emergency on Friday,
25 August 7, 2009, but contacted Plaintiffs’ counsel Tim Ford and left a message stating that the
26 offer of judgment was inadvertently worded to be from “Pierce County” but was intended to be
27 for all Pierce County Defendants - the individual officers as well as the county entity. [Dkt. 26,
28 at 2]. Mr. Williams’ message informed Mr. Ford that he would be out of the office on Monday
and Tuesday, but asked Ford to contact him after business hours. [*Id.*, at 3]. Williams further

1 states that he asked Ford not to take advantage of his mistake. [*Id.*] Mr. Williams acknowledges
2 that Plaintiffs' counsel left two messages on Monday August 10th, one at 11:55 a.m. and one at
3 1:13 p.m. stating that they needed to talk. [*Id.*] Plaintiffs' counsel left a third message at 4:51
4 p.m. stating that "things have moved ahead." [*Id.*]

5 Mr. Ford states that he sent an email to the Court on Monday, August 10, 2009. [Dkt. 34,
6 at 2]. The email was sent to the Court's "Orders box" which is to be only used for proposed
7 orders, pursuant to the Federal Court's CM-ECF procedures. In any event, Mr. Ford
8 acknowledges in the email that after the offer was accepted, he received a phone message from
9 defense counsel "in which he indicated that the offer was not intended to be as it was written"
10 and that Mr. Williams asked Mr. Ford to return his call. [Dkt. 34, at 2]. Ford's email explains
11 that he has twice tried to reach Mr. Williams but has not heard back. It does not relate that Mr.
12 Williams had already told Mr. Ford that he would not be available:

13 I have left two phone messages for him today but have not heard back from him,
14 and have not received anything in writing or sent any filings from Pierce County on
15 the subject. I do not believe there is any ambiguity in the offer or any question that
the offer and acceptance are final and binding but I thought the court should be made
aware of this situation in light of its recent request for a Word copy of the proposed
judgment.

16 [*Id.*] At 1:26 p.m., a Minute Order for Entry of Judgment was entered. [Dkt. 22.] Mr. Ford
17 states that "[w]hen [he] received that Minute order, [he] called the Clerk's office and spoke to
18 [the Court's clerk] who had earlier requested the Word copy of the proposed order and informed
19 her of the e-mail message [he] had sent." [Dkt. 34, at 3]. At that point, judgment had already
20 been entered. Further paperwork was filed by the Clerk at 2:06 p.m. [Dkt. 23.]

21 The Pierce County Defendants now move for Relief from the Judgment pursuant to Fed.
22 R. Civ. P. 60(b)(1). [Dkt. 25].

23 **II. DISCUSSION**

24 Fed. R. Civ. P. 60 (b)(1) provides: "[o]n motion and just terms, the court may relieve a
25 party or its legal representative from a final judgment, order, or proceeding for the following
26 reason[]: (1) mistake, inadvertence, surprise, or excusable neglect."

27 The circumstances detailed above indicate that the motion for relief from the judgment
28 should be granted. The record indicates that Defendants' counsel's drafting error was a result of

1 an inadvertent mistake. Defendants' counsel made a reasonable attempt to correct his mistake
2 by notifying Plaintiffs' counsel and asking him not to take advantage of his error. Plaintiffs
3 cannot be said to be taken by surprise because the offer of judgment was to mirror what was
4 offered at mediation.

5 Plaintiffs point to *Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097 (9th Cir.
6 2006), for the proposition that Defendants here should not be granted relief from the judgment
7 based upon their attorneys' mistake. [Dkt. 33]. In *Latshaw*, the plaintiff appealed the decision
8 of the district court denying her motion for relief from a judgment. *Id.* The *Latshaw* plaintiff
9 argued that she accepted the offer of judgment as a result of advice of counsel, who was
10 mistaken as to the law. *Id.* (Plaintiff there believed that she would be liable for the defendants'
11 attorneys' fees if she did not accept the judgment, when under the law at the time, she would not
12 have been.) The *Latshaw* plaintiff did not fault defendants' actions there, whom she
13 acknowledged were acting in good faith. *Id.* The *Latshaw* Court held that "[a] party will not be
14 released from a poor litigation decision made because of inaccurate information or advice, even
15 if provided by an attorney." *Id.*, at 1101-02.

16 The *Latshaw* matter is distinguishable from this matter in that the Defendants did not
17 make their offer under advice from counsel which was legally incorrect. Defendants' offer was
18 not the offer that was intended - defense counsel made a drafting error. Moreover, defense
19 counsel did not have the authority to make an offer of judgment of \$100,000 as to just the
20 county. *See Yapp v. Excel Corp.*, 186 F.3d 1222, 1231 (10th Cir. 1999)(Rule 60(b)(1) motions
21 premised upon mistake should provide relief to a party when an attorney in the litigation has
22 acted without authority).


23 In light of this Rule 60 analysis, the "contract" issues raised by the judgment and the
24 Motion need not be addressed at length. Suffice it to say there are contract defenses - unilateral
25 mistake coupled with inequitable conduct, and failure of consideration – that would lead the
26 Court to undo the "settlement" on that basis as well. Considering all the circumstances here, the
27 Pierce County Defendants' Motion for Relief from the Judgment should be granted.

28 Accordingly, it is hereby **ORDERED**:

1 The Pierce County Defendants' Motion for Relief from the Judgment [Dkt. 25] **IS**
2 **GRANTED.**

3 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
4 to any party appearing *pro se* at said party's last known address.

5 DATED this 15th day of September, 2009.

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8 RONALD B. LEIGHTON
9 UNITED STATES DISTRICT JUDGE
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